

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---|---|----------------------|
| Expanding the Economic and Innovation |) | |
| Opportunities of Spectrum Through Incentive |) | GN Docket No. 12-268 |
| Auctions |) | |
| |) | |
| Incentive Auction Task Force and Media Bureau |) | MB Docket No. 16-306 |
| Seek Comment on Post-Incentive Auction |) | |
| Transition Scheduling |) | |

**OPPOSITION OF COMPETITIVE CARRIERS ASSOCIATION TO
THE PETITION FOR RECONSIDERATION FILED BY
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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OPPOSITION OF COMPETITIVE CARRIERS ASSOCIATION

I. INTRODUCTION AND SUMMARY.

Competitive Carriers Association (“CCA”)¹ respectfully submits this opposition to the petition for reconsideration (“petition”) submitted by the National Association of Broadcasters (“NAB”).²

NAB’s petition is a regurgitated challenge to the Federal Communications Commission’s (“FCC” or “Commission”) prior final rulemaking, which established a 39-month deadline for certain television broadcasters to shift their over-the-air operations following the conclusion of the 600 MHz incentive auction.³ First, NAB’s transparent attempt to subvert this deadline by

¹ CCA is the leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 subscribers, to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members consisting of small businesses, vendors, and suppliers that provide products and services throughout the mobile communications supply chain.

² Petition for Reconsideration of the National Association of Broadcasters, GN Docket No. 12-268, MB Docket No. 16-306 (filed Mar. 17, 2017) (“Pet.”).

³ See *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567 ¶ 560 (2014) (“*Incentive Auction Order*”).

repackaging and resubmitting its petition as a challenge to a recent Public Notice must fail.⁴ Although it is dressed as an attack on the Incentive Auction Task Force and Media Bureau's announced methodologies for implementing the Commission's 2014 deadline, NAB's latest challenge is an impermissible collateral attack on the 39-month deadline itself. Moreover, even if the Commission were to entertain NAB's petition, the petition remains meritless and should be dismissed for that reason as well. As a matter of procedure, NAB already challenged the 2014 rulemaking, and lost before the FCC and the courts.⁵ Despite this, NAB's latest challenge comes almost 1,000 days after the statutory 30-day deadline for bringing a petition to challenge the 39-month deadline. NAB is attempting to recreate the past, but NAB's latest challenge falls flat.

The Commission should quickly dismiss NAB's petition. The record in this proceeding demonstrates a real and significant need for expeditious clearing of 600 MHz spectrum for wireless broadband services. Introducing delay and uncertainty will have an adverse impact on deployment of rural broadband services, jobs, education, healthcare, and the ability of the United States to compete in a global economy.

⁴ See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 17-107 (Jan. 27, 2017); see also 82 Fed. Reg. 11,106 (Feb. 17, 2017).

⁵ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report & Order, 29 FCC Rcd 6567, 6796-802 ¶¶ 559-73 (2014) ("*Incentive Auction Order*") (establishing a 39-month post-auction transition period for broadcasters that are assigned new channels in the repacking process, which includes a three-month period during which broadcasters will complete and file their construction permit applications followed by a 36-month period consisting of varied construction deadlines). See also *Nat'l Ass'n of Broadcasters v. Fed. Commc'ns Comm'n*, 789 F.3d 165 (D.C. Cir. 2015) (upholding the FCC's 39-month transition period).

II. NAB’S CLAIM THAT THE RELOCATION HAS BEEN AN AFTERTHOUGHT IGNORES AN EXTENSIVE RECORD AND DETAILED FCC ANALYSIS.

NAB claims the Commission “did little or nothing to prepare for the repack” and “viewed the repack as an afterthought.”⁶ A quick review of the record reveals NAB’s claim is baseless. The Commission fully considered the exhaustive record evidence regarding how best to make the 600 MHz band available for broadband use.

A. The FCC Developed an Extensive Record on the Repacking Process.

Wireless operators, broadcast licensees and engineers, tower companies, consumer groups, trade associations and industry vendors of all sizes provided the FCC with data and recommendations regarding how to make 600 MHz spectrum available for broadband deployment by repositioning legacy, over-the-air television broadcasting operations to new frequency locations. In addition to numerous filings advocating that the FCC ensure the repacking process is accomplished effectively, efficiently and in the statutorily-based time allotted,⁷ CCA also commissioned a study by Professor Peter Cramton⁸ that confirmed that the

⁶ Pet. at 4-5.

⁷ See, e.g., Comments of the Competitive Carriers Association, MB Docket No. 16-306, GN Docket No. 12-268 (filed Oct. 31, 2016); Reply Comments of Competitive Carriers Association, MB Docket No. 16-306, GN Docket No. 12-268 (filed Nov. 15, 2016); *Ex Parte* letter from Rebecca Murphy Thompson, EVP & General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, et al. (filed May 20, 2016), <http://bit.ly/2nHjr1R>. See also *Ex Parte* letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed April 14, 2016) ; and *Ex Parte* letter from Rebecca Murphy Thompson, General Counsel, CCA to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Dec. 22, 2015).

⁸ Professor Cramton is one of the world’s foremost experts in auction design. He co-invented the spectrum auction design used in Canada, Australia, and many European countries to auction 4G spectrum. Professor Cramton also co-designed the most comprehensive Broadcast Incentive Auction simulation submitted in the record to date. See Peter Cramton, Hector Lopez, David Malec and Pacharasut Sujarittanonta, *Design of the Reverse Auction in the Broadcast Incentive Auction*, attached to Ex Parte Letter from Preston Padden, Executive Director, Expanding Opportunities for Broadcasters Coalition to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (filed June 15, 2015).

nation's broadcasters can free additional spectrum for mobile broadband use in 39 months or less.⁹

And CCA was not alone. Over more than three years, countless entities filed comments, letters and studies regarding the repacking timeline and process, including, to name a few, the American Tower Company,¹⁰ E.W. Scripps Company,¹¹ Colorado Broadcasters Association,¹² CTIA,¹³ and Sinclair Broadcast Group, Inc.¹⁴ CCA member T-Mobile, for example, filed at least two dozen documents discussing the repacking process,¹⁵ including a 2015 study in which it

⁹ The study also explains why the Malthusian projections in the DTC Report sponsored by the National Association of Broadcasters (NAB) are highly unlikely and unrealistic. *See id.*; and Digital Tech Consulting, Inc., *Broadcast Spectrum Repacking Timeline, Resource and Cost Analysis Study*, attached to *Ex Parte* letter from Myra Moore, President, Digital Tech Consulting, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Nov. 6, 2015). The NAB filing is all the more amazing given that it asserts as a basis for FCC auction that new facts have arisen regarding “The involuntary relocation of well over a thousand television stations” when its own clearinghouse website has identified less than 400 involuntary repacks in total as of March 28, 2017. *See* <http://www.nab.org/repacking/clearinghouse.asp>, *see also* Pet. at 3. Moreover, when the information provided in the NAB Clearinghouse is combined with other publicly available information and the FCC’s own software tools, the only new fact before the Commission is that *fewer* than the anticipated up to 1300 television stations will be repacked.

¹⁰ *See, e.g.*, *Ex Parte* Notice from Christine Crowe and Timothy Cooney, Counsel for American Tower Company to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed March 21, 2016); Letter from Christine Crowe and Timothy Cooney, Counsel for American Tower Company to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Nov. 9, 2015) (requesting more information from the FCC so it could effectively prepare for the repacking process).

¹¹ *See* Comments of the E.W. Scripps Company, MB Docket No. 16-306, GN Docket No. 12-268 (filed Oct. 31, 2016).

¹² *Ex Parte* Notice of Justin Sasso, Colorado Broadcasters Association to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 10-71 and 13-249, and GN Docket No. 12-268 (filed Sept. 15, 2015), <http://bit.ly/2nH2aWl>.

¹³ *See, e.g.*, Comments of CTIA, MB Docket No. 16-306, GN Docket No. 12-268 (filed Oct. 31, 2016), <http://bit.ly/2mYaNMf>.

¹⁴ *See, e.g.*, Comments of Sinclair Broadcast Group, Inc., GN Docket No. 12-268, AU Docket No. 14-252 (filed Feb. 20, 2015), <http://bit.ly/2n4zY1c>.

¹⁵ *See, e.g.*, *Ex Parte* Notice from Trey Hanbury, Counsel for T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (filed July 29, 2016) (outlining discussions with FCC staff and members of the Incentive Auction Task Force regarding the “importance of an efficient, phased reconfiguration of the 600 MHz band.”), <http://bit.ly/2mJUhOS>; *see also* *Ex Parte* Notice from Davina Sashkin, Counsel for T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, MB Docket No. 16-306 (filed Oct. 17, 2016) (summarizing meetings between T-Mobile and FCC staff and members of the Incentive Auction Task Force discussing T-Mobile’s recommendations for the post-auction transition plan structure), <http://bit.ly/2nb4FCH>.

partnered with respected broadcast engineering firms Broadcast Tower Technologies, Inc. (“BTTi”) and Hammett & Edison, Inc. (“Hammett & Edison”) to study the broadcast relocation process post-auction.¹⁶ BTTi and Hammett & Edison completed an “exhaustive review of television broadcast license facilities and in-depth, nationwide analysis of available resources for the major stages of repacking.”¹⁷ In fact, NAB filed letters, comments, and studies with the Commission on the subject of the repacking process.¹⁸ While the FCC chose not to follow NAB’s proposed approach and timeline based on the record in front of it, opting not to take NAB’s recommendations after extensive comment-gathering and deliberation is wholly different than not preparing for the repacking process.

B. The FCC Adopted a Repacking Process Based on Sound Evidence and Careful Analysis.

The Commission digested the copious material on the record as well as its own expert analysis to develop the post-auction transition timeline and process.¹⁹ Oddly, NAB praised FCC staff’s “considerable effort” while simultaneously claiming the FCC’s timelines and procedures are arbitrary and unfounded.²⁰ NAB’s claims that the FCC performed a less than comprehensive

¹⁶ The final report included more than 50 pages of analysis and nearly 350 pages of data in support of its conclusions. *See On Time and On Budget: Completing the 600 MHz Incentive Auction Repacking Process Within the FCC’s 39-Month Relocation Deadline and the Budget Established by Congress, Report*, T-Mobile, BTTi, Hammett & Edison (filed as an attachment to the *Ex Parte* Notice of T-Mobile to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (filed Feb. 17, 2016)), <http://bit.ly/2nAvVeJ>.

¹⁷ *Id.* at 1.

¹⁸ *See, e.g.*, Comments of the National Association of Broadcasters, MB Docket No. 16-306, GN Docket No. 12-268 (filed Oct. 28, 2016), <http://bit.ly/2n4HZmS>; *Ex Parte* Notice of Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, National Association of Broadcasters to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed March 21, 2016), <http://bit.ly/2npcDIA>.

¹⁹ *See Incentive Auction Order*.

²⁰ Pet. at 5-6.

analysis are easily contradicted and disproven by the numerous FCC orders and releases adopting the post-incentive auction transition process.

When the Commission adopted the 39-month timeline, the agency reviewed, analyzed, and addressed the interests of dozens of different commenters from across the wireless and broadcasting industries.²¹ Since then, the Commission sought comment on all aspects of the incentive auction and repacking process,²² reviewed complex and extensive information it received in response to these requests for comment, and used this input to develop the detailed transition process that will follow the close of the incentive auction.²³ Indeed, the detail included in the Commission's nearly 100-page "Post-Incentive Auction Transition Scheduling Plan" undermines NAB's premise.²⁴ NAB nonetheless asserts the Commission adopted the 39-month transition timeline "without any substantive analysis whatsoever."²⁵ The Bureau's detailed plan flows from years of data collection and careful reasoning based on extensive data in the record. These proceedings contradict NAB's claims of Commission indifference or neglect to the procedures necessary to preserve legacy systems while clearing the spectrum for new wireless broadband facilities.

²¹ *Incentive Auction Order*, n.1585.

²² *See, e.g., Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016).

²³ *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, DA 17-107 (MB 2017), <http://bit.ly/2mK1Q8n> ("January 2017 Public Notice").

²⁴ *See generally, id.* In addition to adopting a methodology to establish construction deadlines for full power and Class A television stations that are transitioning to new channels, the FCC addressed requests for relief from the transition obligations, the temporary joint use of channels, transition project management and progress reporting, and interim and auxiliary facilities

²⁵ *Id.* at 5.

C. NAB's Remaining Contentions Lack Merit.

NAB does not meaningfully address the Media Bureau's actual post-auction transition plan. Its fleeting mentions of the Bureau's public notice bear no resemblance to the Bureau's actual plan, lack merit and should be summarily dismissed.

First, NAB claims the Bureau did not "optimize the repacking results during the auction" to increase the efficiency of the post-auction transition.²⁶ In fact, the Media Bureau implemented the Commission's directive to develop a phased transition schedule through the use of scheduling tools whose express purpose was to implement the post-auction transition in the most efficient manner possible.²⁷ Far from ignoring the comments of NAB and other parties to the proceeding, the Media Bureau's scheduling tools prioritized the same goals that NAB claims are missing from consideration, including attempting to require the fewest number of stations to move.²⁸

Second, NAB claims that the transition plan "does not consider" the coordination needed among broadcasters that share towers with other service providers, such as FM stations.²⁹ In its January 2017 Public Notice, however, the Media Bureau noted that it had revised its approach to the transition to accommodate concerns about stations that share common facilities.³⁰ Indeed, the Media Bureau explained it had "modified the tool to substantially reduce the 'same tower

²⁶ Pet. at 4.

²⁷ See *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 ¶¶ 2, 5 (MB 2016).

²⁸ *January 2017 Public Notice* ¶ 26.

²⁹ Pet. at 6.

³⁰ *January 2017 Public Notice* ¶ 40.

discount’ to account for the additional coordination that will be required” with other service providers such as FM stations or cellular providers.³¹

Third, NAB asserts that the Media Bureau made “no allowance for unforeseen events that prevent stations from being able to complete construction of their new facilities”³² even though NAB concedes in the same paragraph that the Media Bureau *will*, in fact, consider the effect of unforeseen circumstances on a case-by-case basis.³³ The Media Bureau said it would be inclined to grant requests for waivers of the construction permit deadlines that “specifically demonstrate that implementation would not interfere with other stations’ transition efforts and address how implementation of the proposal may affect the transition schedule.”³⁴ In addition, the Media Bureau said it would consider alternative plans that “may reduce reimbursement costs or implement a market-wide transition plan that could allow stations to more efficiently utilize limited resources, facilitate coordination, or reduce the impact of the transition on television viewers.”³⁵

Finally, NAB improperly criticizes the FCC for not implementing a “substantially more hands-on approach” to oversight of the repacking process even as NAB bemoans the reporting processes that the Media Bureau adopted for the purpose of carefully “monitor[ing] the progress of the transition in real time, identify[ing] problem areas, and as needed develop[ing]

³¹ *Id.*

³² Pet. at 7.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

solutions.”³⁶ The FCC should acknowledge that NAB is making inconsistent arguments on both sides. NAB’s petition deserves no further consideration and should be dismissed.

The FCC should quickly dismiss NAB’s petition to avoid uncertainty and delay. A robust record demonstrates a need for new spectrum to support wireless broadband services. Delaying the repacking process would delay the deployment of the 600 MHz band for rural broadband services,³⁷ as well as the jobs and other economic benefits that additional spectrum will bring to the U.S. economy.

III. NAB’S PETITION IS UNTIMELY.

In addition to the meritless substantive claims, NAB’s petition is procedurally infirm. To challenge an eligible action taken by the Commission, “[a] petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”³⁸ This statutorily-prescribed 30-day deadline to submit a petition for reconsideration, “under the express terms of the Communications Act,” will be relaxed only in ““extraordinary”” and “highly unusual circumstances”— for example, an affected party unrepresented by counsel not receiving customary notice of the Commission’s action.³⁹ Absent such a showing, a late-coming petition for reconsideration cannot be entertained without

³⁶ *January 2017 Public Notice* ¶ 61.

³⁷ CCA likewise reiterates its support for expeditiously clearing broadcast television stations from channel 51 to minimize interference and promote buildout of Lower 700 MHz A block licenses. While many competitive carriers have taken advantage of voluntary relocation of channel 51, prioritizing relocation of channel 51 will allow competitive carriers to maximize their investment and more quickly deploy advanced mobile broadband services, often in rural and remote areas. *See* Reply Comments of Competitive Carriers Association, MB Docket No. 16-306, GN Docket No. 12-268 (filed Nov. 15, 2016) (*citing Incentive Auction Order* 29 FCC Rcd 6567 ¶ 737 (2014), affirmed, *Nat’l Ass’n of Broadcasters v. F.C.C.*, 789 F.3d 165 (D.C. Cir. 2015)).

³⁸ 47 U.S.C. § 405(a); *see also* 47 C.F.R. § 1.429(d).

³⁹ *See Reuters Ltd. v. F.C.C.*, 781 F.2d 946, 951–52 (D.C. Cir. 1986) (*citing Gardner v. F.C.C.*, 530 F.2d 1086, 1091–92 & n.24 (D.C. Cir. 1976)).

“the Commission act[ing] beyond its lawful authority.”⁴⁰ Per the FCC’s rule, this 30-day cutoff is a bright line, not a sliding scale.⁴¹

Here, there can be no doubt that NAB’s challenge to the Commission’s 39-month deadline is severely late. The 39-month deadline was announced in a final rule adopted by the FCC on May 15, 2014 and published on August 15, 2014.⁴² NAB lodged its petition for reconsideration on March 17, 2017 – 945 days later. Because this filing comes nearly three years too late, NAB’s petition should be summarily dismissed.

Nor can NAB’s challenge proceed on the theory that there are “extraordinary” or “highly unusual” circumstances at play. NAB plainly had notice of the 2014 rulemaking and ample opportunity to challenge this aspect of the auction plan. Several parties filed petitions for reconsideration of the 39-month timeline. Moreover, Sinclair Broadcasting Group challenged the 39-month timeline before the United States Court of Appeals for the District of Columbia Circuit, and lost.⁴³ The court upheld the timeline as a reasonable balancing of the Spectrum Act’s competing imperatives and, in support of its ruling, noted that NAB had called for a 30-month post-auction transition period.⁴⁴ NAB has not complied with the 30-day deadline for

⁴⁰ *Id.* at 952.

⁴¹ *See Channel One Sys., Inc. v. F.C.C.*, 848 F.2d 1305, 1306 (D.C. Cir. 1988) (observing that the “30-day filing period” for petitions for reconsideration “ends on the 30th day, rather than at 3 p.m. on the 31st day”).

⁴² *See In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567 ¶ 560 (2014) (“*Incentive Auction Order*”).

⁴³ *Id.* at 182.

⁴⁴ *Id.*; *see also* Comments of the National Association of Broadcasters, GN Docket No. 12-268, at 50 (filed Jan. 25, 2013), <http://bit.ly/2nngPbm>.

reconsideration and there are no extraordinary circumstances that justify its delay. Accordingly, NAB's petition for reconsideration should be dismissed.⁴⁵

IV. NAB'S PETITION IS AN IMPERMISSIBLE COLLATERAL ATTACK ON THE COMMISSION'S 39-MONTH DEADLINE.

In an effort to sidestep the fact that its petition is time-barred, NAB attempts to recast its challenge as an attack on the Incentive Auction Task Force and Media Bureau's recent adoption of methodologies implementing the 39-month deadline, rather than an attack on the Commission's 39-month deadline itself.⁴⁶ But NAB cannot now renew its assault on the Commission's 39-month deadline merely because the Commission has recently adopted methodologies implementing that deadline. As the Commission's longstanding practice requires, when petitioners raise "indirect challenges to decisions that were adopted in proceedings in which the right to review has expired," such challenges are "impermissible collateral attacks" on the underlying decision and thus "untimely."⁴⁷ Permitting these "untimely collateral challenge[s]" would work an obvious end-run around the relevant 30-day deadline, as well as the efficiency and finality purposes that the deadline serves; to avoid that outcome, such challenges "are properly denied."⁴⁸

⁴⁵ See 47 C.F.R. § 1.429(l)(7) (providing that petitions for reconsideration "that plainly do not warrant consideration by the Commission," including those that "[f]ail to comply with" the 30-day deadline, "may be dismissed or denied by the relevant bureau(s) or office(s)").

⁴⁶ See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 17-107 (Jan. 27, 2017); see also 82 Fed. Reg. 11,106 (Feb. 17, 2017).

⁴⁷ See, e.g., *Amendment of Section 73.622(I), Post Transition Table of DTV Allotments Television Broadcast Stations (Seaford, Delaware)*, 29 FCC Rcd 4769 ¶ 9 (2014).

⁴⁸ See *id.* ¶ 9 & nn.28–29 (collecting examples of impermissible collateral attacks). The Commission does provide for reopening proceedings that have become final under narrowly circumscribed circumstances: when there has been "fraud" and when "the challenged result is unconscionable." See, e.g., *Letter to Jerrold Miller, Esq. Miller & Nelly, P.C. Richard F. Swift, Esq. Irwin, Campbell & Tannenwald, P.C.*, 21 FCC Rcd 2200, 2202 (2006). The petition here raises no such implication of fraud or unconscionability, and NAB does not maintain otherwise.

Here, the clear thrust of NAB's petition takes aim at the Commission's underlying 39-month deadline itself, not at the subsequently announced implementing methodologies. NAB's petition is littered with statements that reveal its true purpose.⁴⁹ Indeed, the heart of NAB's petition turns on the effects of compliance with the 39-month deadline, not on any requirement established as a necessary consequence of implementing of that deadline.⁵⁰ This argument is not new. NAB is merely recycling its previous opposition to the Commission's 39-month deadline once more.⁵¹

Any doubt as to the true purpose of NAB's latest challenge is belied by the petition's stated rationale for reconsideration. NAB asserts that it is seeking "reconsideration pursuant to Section 1.429 of the Commission's rules because new facts are available regarding the repack and because reconsideration is required in the public interest."⁵² The regulation referenced by NAB allows for "reconsideration which relies on facts or arguments which have not previously been presented to the Commission" when there are "events which have occurred or circumstances which have changed since the last opportunity to present such matters to the commission" or when "[t]he Commission determines that consideration of the facts or arguments

⁴⁹ See, e.g., Pet. at ii ("the transition plan elevates blind adherence to the Commission's arbitrary and unfounded 39-month deadline above all other considerations"); *id.* at 2 ("the Public Notice, which is predicated on perpetuating the fiction that compliance with the arbitrary 39-month deadline is possible, reflects a Commission policy that should be promptly revised"); *id.* at 5 ("the Commission viewed the repack as an afterthought, and ordered staff to develop a schedule that complied with an artificial and arbitrary deadline"); *id.* at 7 ("refusing to waive deadlines solely to maintain the fiction that its 39-month timeframe will prove achievable is irrational and will harm viewers").

⁵⁰ See *id.* at 5 ("The most problematic aspect of the transition plan . . . is the plan's rigid and unyielding insistence on the infallibility of a 39-month deadline the Commission adopted without any substantive analysis whatsoever").

⁵¹ See generally *Nat'l Assoc. of Broadcs.*, 789 F.3d at 170–80.

⁵² Pet. at 2.

relied on is required in the public interest.”⁵³ Tellingly, however, NAB does not identify new facts regarding the repack. Similarly, the “public interest” served appears to be nothing more than undermining—and effectively overruling—what NAB views as the Commission’s “arbitrary and unfounded 39-month deadline.”⁵⁴

Given the petition’s true purpose of waging yet another collateral attack on the Commission’s 39-month deadline, compounded with NAB’s baseless policy arguments, NAB’s petition is meritless, procedurally improper and should be summarily dismissed.⁵⁵

⁵³ 47 C.F.R. § 1.429(b)(1), (b)(3).

⁵⁴ Pet. at ii.

⁵⁵ See 47 C.F.R. § 1.429(l).

V. CONCLUSION.

NAB petitions the Commission nearly 1,000 days past the deadline to challenge the Commission's 2014 order adopting the 39-month timeline for the post-incentive auction transition. While NAB conceals its latest collateral attack on the 39-month deadline as a critique of the Media Bureau's rules implementing the Commission's 2014 Order, there is no connection between the Media Bureau procedures that NAB attacks and the ones the Bureau actually adopted. NAB has tried – and failed – to delay new broadband investment resulting from the 600 MHz spectrum and its latest petition offers no new facts, evidence, or persuasive arguments than NAB previously made. The FCC should act quickly to dismiss NAB's petition.

Respectfully submitted,

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